IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION

MISC. PETITION NO.65 OF 1998

Mashappa R. Kunchikarve & Ors. ....Petitioners
V/s.
Bharati P. Shah @
Mrs.Bharathi Nawab Rajput ....Respondent

Mr.O.P. Pandey i/b M/s.Pandey & Co. for the Petitioners.

CORAM : S.J. VAZIFDAR, J.
DATED : 13TH JULY, 2007.

P.C. :

1. The Petitioners have sought issuance of heirship certificate under the provisions of the Bombay Regulation Act, 1827. The Petitioners have also sought a declaration that the purported heirship certificate dated 27.11.1995 issued by the Hon'ble Incharge Principal Judge, City Civil Court, Bombay in Misc.Petition No.268 of 1995 in favour of the Respondent is illegal and void and an order restraining the Respondent from acting on the same.

2. The Petitioners are nephews of the deceased, The Respondent, it is alleged, is a stranger to the family.

3. All the procedures and formalities have been complied with. The proclamation has been issued. No objections have been received. There is no affidavit in reply. The said heirship certificate issued by the Hon'ble Incharge Principal Judge, City Civil Court, Bombay is void and has no legal effect in view of the judgment of this Court in *In re Anthony Fernandes and others, 1993(1) Bom.C.R. 580,* where it is held as under :-

> "In view of the above discussion, I summarise my conclusions as under :
>
> (a) The Bombay Regulation VIII of 1827 continues to be 'law in force'. Provisions contained in the said regulation are supplemented in certain respects by the provisions contained in Indian succession Act, 1925.
>
> (b) The expression "Zilla Court" used in Bombay Regulation VIII of 1827 is liable to be equated to the expression "District Judge" used in section 2(bb) of the Indian Succession Act, 1925. The said expression means "principal Civil Court of Original Jurisdiction". Whereever the High Court has Ordinary Original Civil Jurisdiction, the High Court is 'deemed District Court' for purpose of exercise of powers under bombay Regulation VIII of 1827. the Bombay City Civil Court has no jurisdiction to grant heirship certificate or certificate of executorship or administratorship. The City Civil Court is not 'Zilla Court" within meaning of the said expression as used in Bombay Regulation VIII of

1827.

(c) Paruck's commentary at page 613 of the Indian Succession Act, 1925 (7th Edition) to the effect that Bombay Regulation No.VIII of 1827 does not apply to High Court is erroneous.

(d) The Prothonotary & Senior Master is duty bound to entertain and process the applications for issue of necessary certificate under Bombay Regulation No.VIII of 1827 and place the same for orders and determination of disputes before the learned Judge taking testamentary and Intestate matters and need not entertain any doubt about maintainability of these applications in this Court."

4. In the circumstances,the Petition is made absolute in terms of prayers (a), (b) and (c).